BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Jackson Payne, Jr. Dist. L01, Block 59, Parcels 00127 & 00132 Residential Property Tax Year 2006	)) Shelby County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Parcel 00127

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$28,100	$94,800	$122,900	$30,725

Parcel 00132

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$53,500	$ -0-	$53,500	$13,375

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on August 21, 2007 in Memphis, Tennessee. The taxpayer was represented by Frederick P. Kelly, Esq. The assessor of property was represented by John Zelinka, Esq. Also in attendance at the hearing were Jackson Payne, Jr., the appellant and Shelby County Staff Appraiser Ron Palmer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved four (4) acre lot and a 6.097 acre lot improved with a residence. Both parcels are located on Kingsridge Drive in Lakeland, Tennessee, but are not contiguous.

The taxpayer originally appealed the disputed appraisals to the Shelby County Board of Equalization. The hearing examiner for the local board recommended that parcels 127 and 132 be valued at $77,100 and $20,000 respectively. The assessor of property appealed the hearing examiner's recommendation to the full Shelby County Board of Equalization which, in turn, valued parcels 127 and 132 at $122,900 and $53,500 respectively. As previously noted, the taxpayer has appealed the full board's decision to the State Board of Equalization.

The taxpayer contended that parcels 127 and 132 should be valued at $77,100 and $20,000 respectively as recommended by the hearing examiner. In support of this position, the taxpayer argued that subject parcels experience a significant dimunition in value for three reasons. First, both parcels are land-locked. Second, the title to subject property is not

clear. Pursuant to his mother's will, Mr. Payne has a life estate in both parcels. Upon Mr. Payne's death, his living issue will inherit the property per stirpes. Third, subject dwelling is in poor physical condition.

The assessor contended that parcels 127 and 132 should remain valued at $122,900 and $53,500 respectively. In support of this position, Mr. Palmer essentially testified that subject land was valued by discounting the indication of value from comparable sales by 35% due to its being land-locked. Mr. Zelinka, in turn, basically argued that the taxpayer introduced insufficient evidence to establish what, if any, further reduction in value is warranted.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued as contended by the assessor of property absent additional evidence from the taxpayer.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the taxpayer did not introduce a cost, sales comparison or income approach into evidence. The taxpayer simply argued that the hearing examiner's recommended values should be reinstated. Unfortunately, there is nothing in the record detailing how the hearing examiner arrived at his or her conclusions of value. The administrative judge finds that the hearing examiner's recommendations effectively became a nullity when rejected by the full Shelby County Board of Equalization.

The administrative judge finds that the assessor of property did not dispute subject parcels experience a loss in value for the reasons asserted by the taxpayer. The assessor simply maintained that an attempt had been made to address the situation and the taxpayer offered no proof by which to quantify the loss in value.

The administrative judge finds merely reciting factors that could cause a dimunition in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in

value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

> The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

> The taxpayer also claimed that the land value set by the assessing authorities. . .was too high. In support of that position, she claimed that. . .the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2006:

Parcel 00127

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$28,100	$94,800	$122,900	$30,725

Parcel 00132

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$53,500	$ -0-	$53,500	$13,375

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be**

filed within thirty (30) days from the date the initial decision is sent." Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of September, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Frederick P. Kelly, Esq.
Tameaka Stanton-Riley, Appeals Manager